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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,235	05/29/2001	Larry Richard Robinson	8569	5928

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

WELLS, LAUREN Q

ART UNIT PAPER NUMBER

1617

DATE MAILED: 09/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/867,235

Applicant(s)

ROBINSON ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

Claims 1-31 are pending.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-2, 4-7, 10, 12, 20, 23, 27 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Rouquet et al. (EP 0908175).

Rouquet et al. teach compositions comprising elastomeric organopolysiloxanes. Dimethicone/vinyl dimethicone crosspolymers are disclosed as elastomeric organopolysiloxanes. Silicone oils are disclosed for use in the compositions and antioxidants are disclosed as composition additives. Exemplified is a composition comprising 8% crosslinked silicone elastomer, 2% cyclomethicone, 2% dimethicone, and 0.1% vitamin E. It is further disclosed that the composition can be in the form of an anhydrous gel, a water-in-oil emulsions, or an oil-in-

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water emulsion, and that silicone oils can comprise 5-90% of the composition. See Pg. 6 [0021]; pg. 8 [0029], [0033]-pg. 17.

Claims 1-2, 4-7, 10-12, 20, 23, 27, 29-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Mohammadi (6,217,913).

Mohammadi teach cosmetic compositions comprising gorgonian extract, a crosslinked polysiloxane elastomer, a surfactant, and a carrier. Dimethicone/vinyl dimethicone crosspolymers in cyclomethicone are disclosed as elastomers comprising 0.01-30% of the composition. Skin care actives, such as retinol, retinyl palmitate, salicylic acid and others are disclosed as comprising 0.0001-5% of the composition. Exemplified is a composition comprising 0.5% vitamin E acetate, 3% cyclomethicone, and 20% silicone elastomer. Col. 2, line 13-line 39; Col. 4, line 45-Col. 6, line 65.

Claims 1-2, 4, 6-7, 9-12, 20, 22, 23, 27, 29-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Sine et al. (6,183,766).

Sine et al. teach a composition comprising sanitizing agent, moisturizing agent, degreasing agents, thickeners, humectants, perfumes, and from 0-60% water. Silicones selected from silicone elastomers, silicone elastomer/volatile silicone blends, silicone elastomer/nonvolatile silicone blends, nonvolatile/volatile silicone blends, and mixtures thereof are disclosed as degreasing agents. Exemplified is a composition comprising 7.5% SFE839 Elastomer Dispersion (cyclomethicone and dimethicone/vinyldimethicone crosspolymer), 0.5% dimethicone fluid, 5% glycerin, 2% petrolatum. Dimethicone/vinyldimethicone crosspolymers and dimethicone crosspolymers are disclosed as silicone elastomers, wherein the elastomers comprise 0.01-5% of the composition. Anti-inflammatory agents, retinoids, anti-oxidants,

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chelators, vitamin b3, vitamin e and others are disclosed as additives. See Col. 2, line 55-Col. 3, line 20; Col. 20, line 5-Col. 24, line 57.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al.

Rouquet et al. is applied as discussed above. The reference lacks exemplifying the preferred percent weight of the silicone oil and anhydrous forms.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify the silicone oils of Rouquet as comprising 5-90% of the composition because Rouquet teaches that silicone oils can comprise all of the fatty phase, and Rouquet teaches that the fatty phase can comprise 5-90% of the composition.

Claims 1, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohammadi (6,217,913).

Mohammadi is applied as discussed above. The reference lacks exemplifying oil-soluble skin care actives.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify a composition comprising retinyl palmitate, silicone oil, and silicone

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elastomer using the teachings of Mohammadi because Mohammadi teaches that 0.001-5% retinyl palmitate can be added to his composition.

Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sine et al..

Sine et al. is applied as discussed above. The reference lacks exemplification of preferred active agents, preferred percent weights of silicone oils.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add vitamin B3 to the composition of Sine et al. because Sine et al. teach that vitamins, such as vitamin B3, may be added to their compositions in amounts of 0.5-50%.

Claims 1-7, 10-12, 20, 23, 27, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stepniewski et al. (6,027,738).

Stepniewski et al. teach an anhydrous makeup composition comprising a silicone gel and a silicone-oil base, wherein the silicone gel comprises an organopolysiloxane elastomer dispersed in a silicone-compatible vehicle. Dimethicone is disclosed as a vehicle and a silicone-oil base. Dimethicone/vinyl dimethicone crosspolymers are disclosed as elastomers.

Polyterpenes are disclosed as film forming agents that can be added to the composition. The reference lacks an exemplification of the instant invention. See Col. 2, line 35-Col. 4, line 10; Col. 5, line 29-Col. 6, line 36.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify a composition comprising dimethicone/vinyl dimethicone crosspolymer, dimethicone, and polyterpenes using the teachings of Stepniewski et al. because Stepniewski et al. exemplify compositions comprising organopolysiloxane elastomers in dimethicone, and teach

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that polyterpenes are film-forming agents that can be added to the make-up compositions to confer transfer resistance to the make-up product.

Claims 1, 5, 8, 13-19, 21, 24-26, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roquet et al. or Mohammadi or Sine et al. or Stepniewski in view of Beerse et al. (6,294,186).

Roquet et al., Mohammadi, Sine et al, and Stepniewski et al. are applied as discussed above. The references lack farnesol and a water-in-silicone emulsion.

Beerse et al. teach antimicrobial compositions comprising a benzoic acid analog and a metal salt. Water-in-silicone emulsions, water-in-oil emulsions, oil-in-water emulsions are disclosed as interchangeable carriers for the composition. Farnesol is disclosed as an antimicrobial compound. Retinyl palmitate, retinyl acetate, and others are disclosed as retinoids for use as anti-wrinkle actives in the composition. See col. 8, line 15-Col. 17, line 21; Col. 22, lines 16-37.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the compositions for Rouquet et al., Mohammadi et al., Sine et al., and Stepniewski et al. in the form of the water-in-silicone emulsions of Beerse et al. because a) Roquet et al. teach their compositions in the form of gels, w/o emulsions, o/w emulsions; b) Mohammadi, Sine et al., and Stepniweski et al. teach their compositions in the form of a gel, and c) Beerse et al. teach gels, o/w emulsions, w/o emulsions, and water-in-silicone emulsions as interchangeable carriers.

### ***Unexpected Results***

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It is applicant's burden to demonstrate unexpected results over the closest prior art. See MPEP 716.02, also 716.02 (a) - (g). Furthermore, the unexpected results should be demonstrated with evidence that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Moreover, evidence as to any unexpected benefits must be "clear and convincing" *In re Lohr*, 137 USPQ 548 (CCPA 1963), and be of a scope reasonably commensurate with the scope of the subject matter claimed, *In re Linder*, 173 USPQ 356 (CCPA 1972).

In the instant case, there are no unexpected results.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
July 16, 2002

RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200